

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
EASTERN DIVISION**

Henry H. Howe,

Plaintiff,

-vs-

Steven Gilpin, et al.

Defendants.

Case No. 3:20-cv-00013

**DEFENDANTS DELICIA GLAZE AND  
BARBARA L. WHELAN’S BRIEF IN  
SUPPORT OF MOTION FOR  
TAXATION OF COSTS AND  
DISBURSEMENTS**

¶1 COME NOW, Defendants Delicia Glaze (“Glaze”) and Barbara L. Whelan (“Whelan”), by and through their undersigned counsel, and pursuant to 28 U.S.C. § 1920, Fed. R. Civ. P. 54(d) and D.N.D. Civ. L.R. 54.1, respectfully moved this Court for the taxation of costs and disbursements, in the total amount of \$7,385.55, be added to the Judgment (ECF 123) and assessed against Plaintiff Henry H. Howe (“Howe”) and in favor of Glaze and Whelan.

¶2 On March 28, 2022, this Court issued its Order Granting Defendants’ Motions for Summary Judgment and the Clerk’s Judgment was entered that dismissed in total Plaintiff’s claims. ECF 122-123. Thus, given all claims of Howe were dismissed with prejudice, there can be little debate Glaze and Whelan are prevailing parties in the action and are allowed to be awarded costs and disbursements against Howe. Fed. R. Civ. P. 54(d); 28 U.S.C. § 1920; Stanley v. Cottrell, Inc., 784 F.3d 454, 464 (8th Cir. 2015) (“Rule 54(d) of the Federal Rules of Civil Procedure allows district courts to tax costs in favor of a prevailing party and Title 28 U.S.C. § 1920 defines the expenses that may be taxed as costs pursuant to that rule”); Sander v. Oestreich, 2018 WL 10344735, at \*1 (D.N.D. Mar. 7, 2018) (same); see also SuperTurf, Inc. v. Monsanto Co., 660 F.2d 1275, 1287 (8th Cir. 1981) (holding “a party who has obtained some relief usually will be considered the ‘prevailing party’ under F.R.Civ.P. 54(d) even if it has not succeeded on all of its claims”); Barber v. T.D. Williamson, Inc., 254 F.3d 1223, 1234 (10th Cir. 2001) (“[u]sually the litigant in whose favor

judgment is rendered is the prevailing party for purposes of Rule 54(d)[ (1) ].” citing Wright & Miller, Federal Practice & Procedure, § 2667)).

¶3 As explained by the Eighth Circuit Court of Appeals, Federal Rule 54(d), “represents a codification of the “presumption that the prevailing party is entitled to costs.” Greasier v. State, Dep’t of Corr., 145 F.3d 979, 985 (8th Cir. 1998) (quoting Bathke v. Casey’s General Stores, Inc., 64 F.3d 340, 347 (8th Cir.1995); Sander v. City of Dickinson, N. Dakota, 2018 WL 10345281, at \*1 (D.N.D. Mar. 7, 2018) (same). Despite this presumption, district courts have substantial discretion in awarding costs to the prevailing party. Id. However, it is Howe that bears the burden of overcoming the presumption that Glaze and Whelan are entitled to recover all costs allowed by 28 U.S.C. § 1920. Stanley, Inc., 784 F.3d at 464; Oil & Gas Transfer L.L.C. v. Karr, 2018 WL 10246118, at \*1 (D.N.D. May 18, 2018), aff’d, 929 F.3d 949 (8th Cir. 2019); Sander, 2018 WL 10345281, at \*1.

¶4 Here, Glaze and Whelan are the prevailing parties, and have complied with requirements set out in D.N.D. Civ. L.R. 54.1 to seek and have taxed against Howe costs and disbursements. The costs and disbursements sought by Glaze and Whelan – as set out in the verification of the undersigned filed herewith – fall within those costs and disbursements described in 28 U.S.C. § 1920. Accordingly, Glaze and Whelan request this Court, for the taxation of costs and disbursements, in the total amount of \$7,385.55, be added to and included in the Judgment (ECF 123) and assessed against Howe and in favor of Glaze and Whelan.

[¶5] Dated this 11<sup>st</sup> day of April, 2022.

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